



MAINE REVENUE SERVICES SALES FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 12

GROCERS

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

The following instructions do not apply to retail locations that primarily sell prepared food. The Maine Sales and Use Tax Law provides that sales of prepared foods are taxable at 7%. All persons making sales of prepared food, regardless of the type of establishment, will charge 7% sales tax on all sales of prepared food and should refer to Instruction Bulletin No. 27, "Sales of Prepared Food."

1. EXEMPT SALES.

a. Nontaxable Items. There are several other categories of products that are ordinarily sold by grocers which are not subject to Maine sales tax. The following is a list of categories of items sold by grocers, sales of which are not subject to the tax. This list is not intended to be all-inclusive.

Grocery staples ordinarily consumed for human nourishment

Publications, such as newspapers or magazines, which are published on a regular schedule at least once in every three months;

Fruit & Vegetable seeds

Fertilizer for vegetables

Pesticides, insecticides, fungicides for use in agricultural production

Returnable containers when sold with the contents

Kerosene, dyed special fuel, or propane for home cooking or heating

b. Sales to Exempt Organizations. Sales of any kind to the federal government, the State of Maine and political subdivisions of the State of Maine are exempt from sales tax. When making sales to government agencies, no evidence of exemption is required other than the invoice of the seller indicating a sale to an exempt governmental entity. Sales to other states or foreign countries or their sub-divisions are not exempt from Maine sales tax.

The Maine Sales and Use Tax Law also provides exemptions for sales to various organizations such as hospitals, schools, regularly organized churches or houses of religious worship and a number of other types of organizations. Organizations that qualify for exemption must obtain exemption certificates from Maine Revenue Services in accordance with Rule 302, and sales should be made tax-free to these organizations only when the purchaser furnishes a copy of its exemption certificate to the seller. The exemption does not apply to the clergy, staff or employees of exempt organizations.

Sales made to exempt organizations must be paid for by using a check, purchase order or credit card in the name of the exempt organization. Cash sales or sales paid for by personal checks cannot be exempted.

c. Sales For Resale. Occasionally a grocer may make sales to other registered sellers for resale. Sales for resale are not taxable. When making sales for resale, the grocer should obtain a resale certificate from his customer as provided in Rule 301.

Sales for resale at casual sale, rather than in the regular course of business of a registered seller, are taxable. For example, the sale of soft drinks for resale by a church group at a bazaar, where the church group is not in the business of selling and is not registered under the Sales and Use Tax Law, is taxable.

d. Sales of Items Paid With Federal Food Stamps or WIC Purchases. Sales paid with federal food stamps or Women, Infants and Children, WIC, Special Supplemental Food Program food instruments distributed by the Department of Human Services are exempt from sales tax. Items eligible for purchase with food stamps that are not otherwise exempt under current law include soft drinks, ice and cold sandwiches. When a retailer receives food stamps as partial payment toward a purchase, the dollar value of the food stamps must be applied first to otherwise taxable items, eligible to be purchased with food stamps, in order to determine what portion is exempt from sales tax.

EXAMPLE 1: A person purchases \$50.00 worth of groceries. Payment is made using \$40.00 of food stamps and \$10.00 cash. The purchase includes \$40.00 of eligible items broken down as follows:

\$35.00 exempt items
\$ 5.00 eligible taxable items

In this example the dollar value of the food stamps (\$40.00) is first applied against the purchase of the eligible taxable items (\$5.00). Thus the \$5.00 of eligible taxable items would become exempt.

EXAMPLE 2: A person purchases \$10.00 worth of groceries, all eligible to be purchased with food stamps. However, payment is made using \$3.00 worth of food stamps and \$7.00 cash. The purchase is broken down as follows:

\$6.00 exempt items
\$4.00 eligible taxable items

In this example the dollar value of the food stamps (\$3.00) is first applied against the purchase of the eligible taxable items (\$4.00). Thus only \$3.00 of eligible taxable items would become exempt. The remaining \$1.00 would still be taxable.

This exemption only applies to purchases paid for with federal food stamps or Women, Infants and Children, WIC, Special Supplemental Food Program food instruments distributed by the Department of Human Services. Purchases paid for with stamps or vouchers issued by any other agency, such as municipal public assistance vouchers, are taxed in exactly the same way as purchases paid for with cash.

e. Seeing Eye Dogs. The sale of dog food and other goods that are essential for the care and maintenance of seeing eye dogs used to aid any blind person are exempt from tax. Copies of sales slips or invoices should be kept to support the exemption with the name of the blind person owning the seeing eye dog noted on the sales slip or invoice.

2. TAXABLE SALES.

a. Taxable Items. Most items sold by grocers that do not fall within the definition of "grocery staples" are subject to tax. In addition to items obviously not intended for human consumption, such as laundry and cleaning supplies and pet foods, the term "grocery staples" excludes alcoholic beverages, dietary supplements and substitutes, prepared food and nonprescription medicines. The following is a list of items commonly sold by grocers, sales of which are subject to the tax. This list gives examples and is not all-inclusive.

Air Fresheners	Aluminum Foil	Ammonia
Ayds	Bartenders Mixers	Bathroom Tissue
Beer, including non-alcoholic	Bird Seed	Bleach
Brooms, Brushes & Mops	Candy	Carbonated Water
Charcoal Briquettes	Cigarettes & Cigars & Tobacco Products	Cleansers
Clothespins & Clothesline	Cod Liver Oil	Confections
Detergents	Diapers	Dietary Substitutes such as Slimfast & Metrecal
Dietary Supplements in liquid, powdered, granular, tablet, capsule, lozenge or pill form	Dressings & Bandages	Drugs, except prescription
Dyes	Facial Tissues	Fudge
Gourds	Health & Beauty Aids	Heated Food & Drinks
Ice	Iced Tea – Liquid Form	Light Bulbs
Liquor	Matches	Non-prescription Medicines, Tonics & Vitamins
Paper Napkins & Towels	Pet Food	Prepared Food
Sandwiches	Sanitary Napkins	Scouring Agents (Brillo®,

		Steel Wool, etc.)
Scouring Powder (Comet®, Ajax®, etc.)	Seedlings (Flower & Vegetable)	Soap
Soft Drinks	Toothpaste & Toothbrushes	Trash Bags
Videotape Sales & Rentals	Water-Bottled	Waxes & Polishes
Wines, including non-alcoholic		

b. Candy and Confections. In addition to what would traditionally be considered candy or candy bars, there are some products on the market which are difficult to categorize as either a “grocery staple” or a “confection”. Following are some general guidelines that have been established in determining the taxability of such products. These guidelines are not intended to be all-inclusive.

Bars primarily containing candy or chocolate, such as Twix® bars and Kudo® bars or any “jelly-like” substance primarily containing sugar or corn syrup, such as Gummie Bears® and jelly beans will be considered candy and subject to tax. “Primarily containing” will be considered to be the first ingredient listed on the list of ingredients in the product. **Please note: Most** granola and snack bars (other than those listed above) that have been reviewed by Maine Revenue Services at this time seem to list granola, cereal, oats or fruit as the primary ingredient. (This even includes some that are chocolate covered.) As for the “jelly-like” fruit snacks, if the primary ingredient is corn syrup, sugar or a sugar derivative, the product would be considered candy. If the primary ingredient is fruit, fruit juice or fruit extract the product would be considered a grocery staple.

Candy and confections include snack foods such as popcorn, potato chips, nuts, raisins, pretzels, etc., that are coated with chocolate, yogurt, caramel or carob.

Nutritional snack bars, such as Power Bars®, Luna Bars®, Genisoy Bars®, Matrix® and Tiger Milk® bars, etc. are considered a dietary supplement and as such, subject to tax.

Candied and glazed fruit, fudge, chewing gum and breath mints are also considered confections subject to tax.

c. Prepared Food. Effective October 1, 2001, all sales of prepared food are subject to Maine sales tax at the rate of 7%.

The definition of “prepared food” contains three categories:

- i. all meals served on or off the premises of the retailer

Any prepared sandwich, whether prepared by the retailer or someone else, is considered a “meal” and subject to 7% sales tax. Any food that is heated by the retailer and sold is considered to be a “meal” and subject to 7% sales tax. Also, meals that are prepared and sold and intended to be eaten in a cold state are considered “meals” and subject to 7% sales tax.

ii. all food and drink prepared by the retailer and ready for consumption without further preparation

This category would include:

- food served from self-serve areas such as salad bars and “coffee nooks”*
- food prepared for sale in a heated state regardless of cooling which may have occurred, such as pizza, pieces of chicken, or rotisserie chicken
- bakery items such as cookies, donuts, bagels, etc. that are **prepared by the retailer**, except for bulk sales of grocery staples. (See following discussion)
- Deli platters of cold cuts, cheeses, appetizers, finger rolls, and fruits or vegetables are considered to be prepared by the retailer.

All such sales is subject to tax at the rate of 7%.

*Food products made available by a retailer from a self serve food area designed to offer customers food for immediate consumption, that are not individually prepackaged for resale, are considered food prepared by the retailer and subject to tax at 7%.

iii. all food and drink sold by a retailer that is predominately in the business of selling food prepared by that retailer.

This category will not affect most grocers. A taxpayer will fall into this category if 75% of their **total** sales consist of prepared food. In order to make this analysis a business should look at the total sales, including income from the sales of gas, cigarettes, beer & wine, soda, and prepared food; then compare the total income to the income derived from prepared food only. If the sales of prepared food is greater than 75% of the total sales then the business would fall into this category and should refer to Instructional Bulletin 27 for more details.

The definition of “prepared food” excludes “bulk sales of grocery staples”. “Bulk sales of grocery staples” are exempt regardless of the location from which they are sold. Some examples of food prepared by the retailer that qualify as bulk grocery staples are:

- pies, cakes, desserts and bread and bread products, except those packaged as a single serving
- donuts, muffins, pastries, cookies, etc. sold in quantities of 6 or more of like kind
- products sold from the “deli case”, such as salads, luncheon meats and cheeses, except sandwiches and food prepared for sale in a heated state regardless of cooling which may have occurred prior to the sale
- ice cream packaged in quart or larger containers, maple syrup, jam, jellies, pickles, honey and spaghetti sauce

Fruit baskets are generally considered to be a “bulk sale of a grocery staple.” This is true even if the basket may contain a minor number of otherwise taxable items, such as candy or small trinkets. If the fruit basket contains taxable items of significant value the seller

must either collect sales tax on the price of the basket, or else separately and reasonably account for the taxable and nontaxable portions and collect tax on the taxable items.

3. PURCHASES BY GROCERS

a. Purchases for Resale. When a retailer purchases tangible personal property for resale, the retailer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must state to the supplier whether the purchase is for resale or not and will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.**

b. Packaging Materials. Purchases by retailers of containers and packaging materials used to package the goods that they sell are not taxable. Grocers should purchase items such as paper or plastic bags, styrofoam trays and plastic wrap that will be used to package their products, and actually transferred to the customer who purchases the products, without payment of tax. The supplier should be furnished with a resale certificate as provided in Rule 301.

c. Withdrawals from Inventory. A retailer who takes taxable items from stock for personal or business use becomes liable for use tax based on the cost of the items. Withdrawals from inventory must be reported as taxable purchases on the Sales and Use Tax Return covering the period in which the withdrawal occurred.

4. CLASSIFIED PERMITS.

A "classified permit" establishes the percentages of sales of taxable and exempt commodities made by a retailer during a typical test period. A retailer who has been authorized to do so by the State Tax Assessor may use the percentage of exempt sales established by the classified permit in lieu of maintaining an actual breakdown of sales of taxable and nontaxable commodities. Classified permits are ordinarily issued only to retailers whose cash registers lack the capacity to accurately separate taxable and nontaxable sales.

Any grocer who wishes to use a classified permit must apply to Maine Revenue Services for authorization to do so. Classified permits are not transferable upon the sale of a business. The new owner of a business must obtain a new classified permit even if the former owner had a classified permit. For further information regarding classified permits, the grocer should refer to Rule 313.

5. COUPONS.

a. Manufacturers' Coupons. When a customer presents a coupon issued by the manufacturer or producer of a certain item in full or partial payment of the sale price of that item, the value of the coupon allowed against the price of the item is a part of the taxable sale price of the item. If the item is subject to tax, the tax must be computed based on the entire selling price of that item including the value of the coupon.

EXAMPLE 1: A customer purchases a bag of dog food that ordinarily sells for \$3.99. When paying for the dog food, the customer presents a coupon issued by the manufacturer of the dog food, good for fifty cents off the price of a bag of that company's dog food. The customer is charged \$3.49 plus the 50 cent coupon. The tax on this sale is based on the selling price of \$3.99.

b. Store Coupons. When a discount is allowed by the seller and actually taken by the purchaser, the amount of the discount is not included in the sale price of the item. In this situation, it makes no difference whether the customer is required to present a coupon issued by the seller in order to claim the discount.

EXAMPLE 2: A certain store includes in its newspaper advertisement a coupon good for 10% off the price of a package of light bulbs. The light bulbs are priced at \$2.99 per package. A customer presents the store coupon when buying a package of the light bulbs and is charged \$2.69. The tax due from that customer is based on the selling price of \$2.69. A second customer purchases the same package of light bulbs but does not present the coupon and is charged the regular price of \$2.99. The tax due from that customer is based on the selling price of \$2.99.

6. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: (207) 287-4477**

Or visit our website at www.state.me.us/revenue

The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission, to access to, or operation of its programs, services or activities.

Issued: July 12, 1951

Last Amended: October 1, 2001

(Published under Appropriation 010-18F-0002-07)

ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 §1752. Definitions

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

3-B. Grocery staples. "Grocery staples" means food products ordinarily consumed for human nourishment.

"Grocery staples" does not include spirituous, malt or vinous liquors; soft drinks, iced tea, sodas or beverages such as are ordinarily dispensed at bars or soda fountains or in connection with bars or soda fountains; medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician; water, including mineral bottled and carbonated waters and ice; dietary substitutes; candy and confections; and prepared food.

8-A. Prepared food. "Prepared food" means:

- A. Meals served on or off the premises of the retailer;
- B. Food and drinks that are prepared by the retailer and ready for consumption without further preparation; and
- C. All food and drinks sold from an establishment whose sales of food and drinks that are prepared by the retailer account for more than 75% of the establishment's gross receipts.

"Prepared food" does not include bulk sales of grocery staples.

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by section 1754 or is registered under section 1756.

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

A. "Retail sale" includes:

- (1) Conditional sales, installment lease sales and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later; and
- (2) Sale of products for internal human consumption to a person for resale through coin-operated vending machines when sold to a retailer whose gross receipts from the retail sale of tangible personal property derived through sales from vending machines are more than 50% of the retailer's

gross receipts. The tax must be paid by the retailer to the State. [1989, c. 871, §5 (new).]

B. "Retail sale" does not include:

- (1) Any casual sale;
- (2) Any sale by a personal representative in the settlement of an estate, unless the sale is made through a retailer, or unless the sale is made in the continuation or operation of a business;
- (3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented on a short-term basis;
- (4) The sale, to a person engaged in the business of renting audio or video tapes and audio or video equipment, of audio or video tapes or audio or video equipment for rental;
- (5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more; or
- (6) The sale, to a person engaged in the business of providing cable television services, of cable converter boxes for rental or lease; or
- (7) The sale, to a person engaged in the business of renting furniture, of furniture for rental.

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

14. Sale price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Services which are a part of a retail sale; and
- (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;

- (2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;
- (3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;
- (4) The price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated;
- (5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages;
- (6) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax;
- (7) The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail;
- (8) The fee imposed by Title 10, section 1169, subsection 11;
- (9) The fee imposed by section 4832, subsection 1; or
- (10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B.

17-A. Taxable service. "Taxable service" means:

G. Rental of video tapes and video equipment.

23. Video tapes; video equipment. "Video tapes" means prerecorded magnetic tapes used for noncommercial playback of images and sound on video equipment. It also includes other electronic audio and video media that provide for noncommercial interactive utilization by a person or persons. "Video equipment" means equipment used to play back video tapes, equipment used for recording images and sound for subsequent noncommercial playback and equipment used for noncommercial interactive utilization of electronic audio and video media.

36 §1760. Exemptions

No tax on sales, storage or use shall be collected upon or in connection with:

3. Grocery staples. Sales of grocery staples.

5. Medicines. Sales of medicines for human beings sold on doctor's prescription.

12. Containers. Sale of returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

12-A. Packaging materials. Sales of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials to persons for use in packing, packaging or shipping tangible personal property sold by them or on which they have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning in their regular course of business that are transferred to the possession of the purchaser of that tangible personal property.

14. Publications. Sales of any publication regularly issued at average intervals not exceeding 3 months.

35. Seeing eye dogs. Sales of goods and services which are essential for the care and maintenance of seeing eye dogs which are used to aid any blind person.

54. Food stamp purchases. Sales of items purchased with federal food stamps or Women, Infants and Children, WIC, Special Supplemental Food Program food instruments distributed by the Department of Human Services.

36 §1951-A. Collection of tax; report to State Tax Assessor

1. Monthly report and payment. Every retailer shall file with the State Tax Assessor, on or before the 15th day of each month, a report made under the pains and penalties of perjury on such form as the State Tax Assessor may prescribe that discloses the total sale price of all sales made during the preceding calendar month and such other information as the State Tax Assessor requires. The State Tax Assessor may permit the filing of returns other than monthly. The State Tax Assessor, by rule, may waive reporting nontaxable sales. Upon application of a retailer, the State Tax Assessor shall issue a classified permit establishing the percentage of exempt sales. The classified permit may be amended or revoked as to its classification whenever the State Tax Assessor determines that the percentage of exempt sales is inaccurate. The State Tax Assessor may for good cause extend for not more than 30 days the time for making returns required under chapters 211 to 225. Every person subject to the use tax shall file similar reports, at similar dates, and shall pay the tax or furnish a receipt for the same from a registered retailer.

Relevant Rules: #301 - Sales for Resale and Sales of Packaging Materials; #302 - Government Agencies, Exempt Organizations and Sales Thereto; #305 - Reports and Payments; #313 - Classified Permits; #322 - Sales of Food Products